

**REMARKS**

Applicant respectfully requests reconsideration of the present application.

I. **Disposition of the claims**

Claims 1-24 are pending. Claims 1 and 12-19 are currently amended. Claims 20-24 are new. Exemplary support for each of the amended and newly introduced claims is shown in appendix A, which is attached to this paper and considered part of the amendment. No new matter has been added.

The Examiner is thanked for indicating that claim 13 is allowable. Office action, p. 9. The present version of claim 13 is broader in the way shown in the amendments (notice, e.g., that --person-- replaces “women.”) . Claims 14-18 directly or indirectly depend on claim 13, and claim 19 recites the limitations of claim 13 as amended. It is believed that each claim 13-19 is allowable.

Claim 20 should be allowable once either claim 1 or claim 12 is allowable.

Claims 21-22 should be allowable once claim 1 is allowable.

Claims 23-24 should be allowable once claim 12 is allowable.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate status identifier.

II. **Claim Objections**

Claims 1, 12, and 19 are objected to for reciting the plural term “women.” Office action, p. 2. The present version of the claims avoids this issue as they recite “person.” Thus, the objection should be withdrawn.

III. **Anticipation rejections**

There are two rejections. Each is addressed under a separate header.

**A. Andary (US 5,719,129) as evidenced by Frei (Internat'l J. of Cos. Sci.)**

Claims 1-7 were rejected under §102(b) as anticipated by Andary as evidenced by Frei. Office action, pp. 3-4. A reference can anticipate only what it describes. MPEP § 2131. No anticipation exists here.

On one hand, claim 1 recites *applying to the at least one area of skin comprising one or more stretchmarks a composition comprising, in a suitable vehicle, at least one soya peptide*. Claims 2-7 depend on claim 1. Andary, on the other hand, fails to describe applying its oraposide encapsulated liposomes comprising, among other things, soya protein to *at least one area of skin comprising one or more stretchmarks*. Furthermore, Andary's Example 8 is prophetic (col. 9, ll. 41-43), so Andary is not evidence that the composition of Andary's Example 8 was ever made, let alone applied to any skin, let further alone to *at least one area of skin comprising one or more stretchmarks*. Clearly, no inherent anticipation exists, because not everyone's skin has stretchmarks. Thus, Andary fails to describe the presently rejected invention, and the present rejection should be withdrawn.

**B. Quelle (DE04244418)**

Claim 12 is rejected under § 102(b) as anticipated by the abstract of Quelle. Office action p. 4. The Examiner is provided with the electronic translation of Quelle that is reproducible from the translating function located in the EPO website.

Quelle fails to anticipate claim 12. On one hand, claim 12 recites *applying to at least one area of skin comprising one or more stretchmarks a composition comprising, in a suitable vehicle, at least one tripeptide consisting essentially of the amino residues glycine, histidine, and lysine*. On the other hand, Quelle fails to describe applying its compositions to *at least one area of skin comprising one or more stretchmarks*. Thus, Quelle does not describe or anticipate the present invention, and the rejection should be withdrawn.

**IV. Obviousness rejections**

There are five rejections. Each is addressed under a separate header after stating the appropriate standard.

A determination of obviousness under 35 U.S.C. § 103(a) is a legal conclusion based on underlying facts: (1) the scope and content of the prior art, (2) the differences between the prior art and the claimed invention at the time of invention, (3) the level of ordinary skill in the art, and (4) the objective indicia of nonobviousness. See Graham v. John Deere Co., 383 U.S. 1, 17 (1966). A further inquiry is whether or not a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention, not something approximating it. In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1616 (Fed. Cir. 1999) abrogated on other grounds by In re Gartside, 203 F.3d 1305, 53 U.S.P.Q.2d 1769 (Fed. Cir. 2000).

**A. Rapaport (US 5,444,091) in view of Frei**

Claims 1-6 and 8-10 were rejected under § 103(a) as obvious over the teachings of Rapaport in view of Frei. Office action, pp. 5-6. Rapaport fails to teach a soya peptide. Office action, p. 5. To remedy these deficiencies, Rapaport's teachings were combined with those of Frei, which according to the rejection, teaches that "soya peptide ... increase[es] skin firmness, elasticity, and tone." Office action, p. 5. The Examiner has proposed "to modify the composition of Rapaport by incorporating soya peptide," Office action, p. 5, "because Rapaport teaches that stretchmarks are treated by promoting the rigidity and elasticity of the skin and suggests adding additives to enhance the performance of the product; and Frei teaches the effectiveness of soya protein in improving firmness and elasticity of skin." Office action, p. 6. This rejection is respectfully traversed, because the evidence and explanation of record lacks factual support in the references and the required motivation is not clear and particular to the present invention.

It is unclear from the evidence and explanation where Frei teaches that "soya peptide ... increase[es] skin firmness, elasticity, and tone." Although Frei describes a skin equivalent (SE) model, Frei lacks any objective measurement of skin firmness, elasticity, and tone.

Moreover, Frei's conclusions are at best equivocal, not allowing the reader to infer much. For example, consider the following passages.

After 25 days of culture, the reconstituted epidermis showed some signs of ageing such as a reduction in the number of keratinocyte layers and a flatness of the basal membrane. However, after 15 days of soya peptide treatment, SEs present an epidermis which is morphologically closer to normal human skin than to control SEs. Keratinocyte renewal and differentiation has been strengthened by the application of soya peptide which might also delay the *in vitro* process of ageing.

On a study model which reproduces the environment in which dermal fibroblasts and keratinocytes develop *in vivo*, the significant stimulating effect of a soya peptide on extracellular matrix component synthesis and its action on epidermal differentiation have been shown clearly. This peptide is able to stimulate regeneration of metabolic activity, which may help the skin to look younger.

Frei, p. 171, 3d-4<sup>th</sup> paras. If "the application of soya peptide ... might ... delay the *in vitro* process of aging," Frei, p. 171, 3d full para., last sentence (emphasis added), then the very same application **might** not. Similarly, if "[t]his peptide is able to stimulate regeneration of metabolic activity, which **may** help the skin to look younger," Frei, p. 171, 4th full para., last sentence (emphasis added), then again, it **may** not. As a result, the evidence and explanation fail to support that "soya peptide ... increase[es] skin firmness, elasticity, and tone."

Additionally, according to Frei, "no conclusion could be drawn concerning the way the soya peptide acts in this SE model."

Although a significant protective effect of the epidermis in this SE model has been demonstrated in another study [25], because of its low molecular weight, the tested soya peptide may cross the epidermal barrier (*ex vivo* percutaneous absorption study and *in vivo* study, N. Abdul Malak and E. Perrier, unpublished paper). In addition no conclusion could also be drawn concerning the way the soya peptide acts in this SE model.

Frei, p. 171, last sentence first full paragraph.

As a result, there is no objective reason so combine Frei's teachings with those of Rapaport, which states:

Suitable alpha hydroxy acid treatment compositions work in reducing striae distensae skin stretch marks by virtue of acids such as glycolic acid eliciting a **hyperplastic response** in the epidermis and dermis that counters the breakdown of collagen cross linking and/or stimulates the permanent production of interfibrillar material, such as glycoaminoglycans, which promote both rigidity and elasticity.

Rapaport, col. 4, ll. 31-37 (emphasis added). A **hyperplastic response** cannot be assumed from an unknown way the soya peptide acts. Nor can promoting rigidity and elasticity be inferred from equivocal statements and a lack of objective measurements.

In summary, the Examiner's motivation is not clear and particular to the presently claimed invention. Because motivation that is not clear and particular to the claimed invention smacks of hindsight, *cf. Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1616, the rejection should be withdrawn.

#### B. Rapaport in view of Quelle

Claims 12 and 14-17 were rejected under § 103(a) as obvious over the teachings of Rapaport in view of Quelle. Office action, pp. 5-6. the rejection as to claims 14-17 should be withdrawn, because these claims now depend from claim 13, which is allowable for the reasons stated in Section I above. As to these claims, the rejection should be withdrawn.

Rapaport fails to teach tripeptide consisting of the amino acids glycine, histidine, and lysine. Office action, p. 6. To remedy these deficiencies, Rapaport's teachings were combined with those of Quelle, which according to the rejection, teaches that the "tripeptide Gly-His-Lys [is used] in cosmetic compositions to treat the skin against aging and as radical scavenger (antioxidant)." Office action, p. 6. This rejection is respectfully traversed, because the evidence and explanation of record lacks clear and particular motivation.

The stated motivation equally applies to a potentially limitless number of situations: "to modify the composition of Rapaport by incorporating the tripeptide Gly-His-Lys, as motivated by Quelle, because Rapaport...suggests adding additives to enhance the performance of the product ... and Quelle teaches that the tripeptide promotes collagen synthesis and better antioxidant activity." The Examiner could use the same template for rejecting the use of any known ingredient by replacing the reference "Quelle" and inserting the ingredient/function for "the tripeptide promotes collagen synthesis and better antioxidant activity." (TEMPLATE: "Rapaport ...suggests adding additives to enhance the performance of the product ... and [Insert known reference] teaches that [insert ingredient and function]."). In other words, the

rejection merely states that the ingredient is known, which is absolutely irrelevant to the obviousness of a method of use. Thus, the rejection is improper and should be withdrawn.

**C. Over Rapaport and Frei further in view of Flick (Cos. And Toiletry From. 1995)**

Claim 11 was rejected as obvious over Rapaport and Frei further in view of Flick. Office action, p. 7. Flick was not applied to remedy the deficiencies of Rapaport and Frei. Thus, this rejection should be withdrawn for the same reasons that the rejection over Rapaport in view of Frei should be withdrawn.

**D. Over Rapaport and Quelle further in view of Flick**

Claim 18 was rejected as obvious over Rapaport and Quelle further in view of Flick. Office action, pp. 7-8. The rejection should be withdrawn, because claims 18 now depend from claim 13, which is allowable for the reasons stated in Section I above.

**E. Over Rapaport in view of Frei and Quelle**

Claim 19 was rejected as obvious over Rapaport in view of Frei and Quelle. Office action, pp. 9-10. The rejection should be withdrawn, because claims 19 now depend from claim 13, which is allowable for the reasons stated in Section I above.

**Conclusion**

It is believed that the present application is in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the

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unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

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Enclosures: EPO e-translation of Quelle.

**APPENDIX A:**

**Exemplary support for the amendments and new claims.**

1. (Currently Amended) A method for reducing the formation of and/or treating skin stretchmarks in a ~~women during or after pregnancy or after puberty person~~ **{paragraph 3}**, comprising applying to at least one area of skin comprising one or more stretchmarks **{paragraph 7}** a composition ~~to areas of skin liable to form stretchmarks or having stretchmarks, including skin of the thighs, abdomen, breast, and a combination thereof,~~ the composition comprising, in a suitable vehicle, at least one soya peptide.

12. (Currently Amended) A method for reducing the formation of and/or treating skin stretchmarks in a ~~women during or after pregnancy or after puberty person~~, **{paragraph 3}** comprising applying to at least one area of skin comprising one or more stretchmarks **{paragraph 7}** a composition ~~to areas of skin liable to form stretchmarks or having stretchmarks, including skin of the thighs, abdomen, breast, and a combination thereof,~~ the composition comprising, in a suitable vehicle, at least one tripeptide consisting essentially of the amino acids residues glycine, histidine, and lysine. **{paragraph 13}**

13. (Currently Amended) ~~The method according to claim 12, wherein the A method for reducing the formation of and/or treating skin stretchmarks in a person, comprising applying to at least one area of skin comprising one or more stretchmarks and/or an at least one area liable to form stretchmarks, a composition comprising, in a suitable vehicle, at least one tripeptide has having the sequence Gly-His-Lys, and the tripeptide is conjugated with acetic acid or acetate in the form of a complex with zinc.~~ **{Claim 12}**

14. (Currently Amended) The method according to claim ~~12~~ **13**, wherein the tripeptide is between about 0.1% and about 10% by weight relative to the total weight of the composition.

15. (Currently Amended) The method according to claim ~~12~~ **13**, wherein the composition further comprises at least one  $\alpha$ -hydroxyacid.

17. (Currently Amended) The method according to claim ~~12~~ 13, wherein the composition further comprises lactic acid.

18. (Currently Amended) The method according to claim ~~12~~ 13, wherein the composition further comprises a compound for adjusting the pH to a value of between about 2 and about 4.

19. (Currently Amended) A method for reducing the formation of and/or treating skin stretchmarks in a ~~women during or after pregnancy or after puberty person~~, {paragraph 3} comprising applying a composition to areas of skin liable to form stretchmarks or having stretchmarks, ~~including skin of the thighs, abdomen, breast, and a combination thereof~~, the composition comprising, in a suitable vehicle, a mixture of at least one soya peptide and at least one tripeptide ~~consisting of the amino acids glycine, histidine, and lysine. selected from triptides wherein the tripeptide has the sequence Gly-His-Lys, and the tripeptide is conjugated with acetic acid or acetate in the form of a complex with zinc.~~ {Switch to embodiment of claim 13}

20. (New) A method for reducing the formation of and/or treating skin stretchmarks in a person, comprising applying to at least one area of skin comprising one or more stretchmarks and/or an at least one area liable to form stretchmarks, a composition comprising, in a suitable vehicle, at least one soya peptide and at least one tripeptide consisting essentially of the amino residues glycine, histidine, and lysine. {Compare with original claim 19}

21. (New) The method of claim 1, wherein the one or more stretchmarks are a result selected from puberty, pregnancy, a gain in weight and mechanical stress. {See original claim 1 and specification paragraph 0003}

22. (New) The method of claim 1, wherein the at least one area of skin includes skin of thighs, skin of abdomen, skin of breast and combinations thereof. {See original claim 1}

23. (New) The method of claim 12, wherein the one or more stretchmarks are a result selected from puberty, pregnancy, a gain in weight and mechanical stress. {See original claim 1 and paragraph 0003}

24. (New) The method of claim 12, wherein the at least one area of skin includes skin of thighs, skin of abdomen, skin of breast and combinations thereof. {See original claim 1}